

Response To Restriction Requirement
U.S. Application Serial No. 10/724,434
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REMARKS

In the foregoing, Applicants restricted the application to the Group I claims (i.e., claims 1-67) for prosecution. The Group II claims (i.e., claims 68-72) are thus withdrawn only provisionally. Applicants now set forth arguments in support of their contention that the restriction requirement should be withdrawn.

A. ARGUMENT IN SUPPORT OF TRAVERSAL OF RESTRICTION REQUIREMENT

Applicants respectfully request that the Examiner reconsider the restriction requirement. The claims of Group I pertain to an apparatus for use in accessing the vasculature of a patient, while the claims of Group II pertain to a method of accessing such vasculature. Under MPEP §806.05(h), restriction is proper "if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product."

Applicants submit that restriction is improper because neither prong of MPEP §806.05(h) has been met. First, as for subparagraph (1), the method of accessing the vasculature recited in the Group II claims cannot be practiced with another materially different product. This is because step (a) of claim 68 expressly requires the apparatus of claim 1. Second, as for subparagraph (2), the apparatus "as claimed" in claims 1 and 33 requires it to be used "in accessing a vasculature of a patient...." The apparatus "as claimed" in these

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claims also requires use of "a vein visualization device ... for improving visualization of the vasculature...." The language of the Group I claims thus requires the apparatus to be used both to access the vasculature and to improve visualization of the vasculature. Consequently, the apparatus "as claimed" in Group I cannot be used "in a materially different [method] of using that [apparatus]."

More specifically, in regards to subparagraph (2), the Examiner stated that "[i]n the instant case the product can be used in a materially different method than recited in claim 68, such as for the setting of a broken bone of a patient or the cleaning of a wound." Applicants respectfully submit that this assertion ignores the "as claimed" requirement of subparagraph (2). The Group I claims clearly require the apparatus to be used "in accessing a vasculature of a patient" and in "improving visualization of the vasculature." The apparatus "as claimed" thus cannot be used in a materially different method of using that apparatus. The different methods (e.g., setting broken bone/cleaning a wound) proffered by the Examiner do not take into the account the "as claimed" requirement of MPEP §806.05(h).

For the above reasons, Applicants respectfully ask the Examiner to withdraw the restriction requirement.

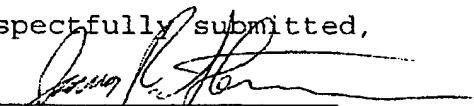
If the restriction requirement is not withdrawn, it is anticipated that Applicants will file a divisional application directed to the claims of the non-elected invention of Group II.

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CONCLUSION

If the Examiner has any questions regarding this Response To Restriction Requirement, he is invited to call the undersigned at the telephone number listed below.

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